

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JASON ROSE,

Petitioner,

-against-

DISTRICT JUDGE CAPERNOL; (ICE)
IMMIGRATION SERVICE,

Respondents.

21-CV-1773 (CM)

TRANSFER ORDER

COLLEEN McMAHON, Chief United States District Judge:

Petitioner, currently incarcerated at USP Victorville in Adelanto, California, brings this *pro se* action under the federal mandamus statute, *see* 28 U.S.C. § 1361, asking this Court to compel immigration authorities to inform USP Victorville and the Federal Bureau of Prisons (FBOP) that he is a U.S. citizen and should not be removed from the United States, following the expiration of his federal sentence.¹ For the following reasons, this action is transferred to the United States District Court for the Central District of New York.

BACKGROUND

Petitioner brings this action under the mandamus statute, naming as Respondents “District Judge Capernol,” who Petitioner does not otherwise identify, and “(ICE) Immigration Service.” He argues that he “is a citizen of the United States through his mother’s naturalization papers [which] pro[ve] that [he] is a U.S. citizen by law and should not be deported after he has finish[ed] serving his federal time in the United States Penitentiary.” (ECF 1, at 1.) He asks this Court to “compel ICE agents to contact FBOP, USP Victorville to verif[y] with ICE documents that shows that [he] is a U.S. citizen by naturalization of his mother [and] to expunge any

¹ This Court’s records show that Petitioner was convicted in the Southern District of New York on December 19, 2005, and sentenced to a 19-year-term of incarceration. *See United States v. Rose*, No. 13-CR-1501-3 (VEC).

detainers or any future detainers for deportation (or to prevent deportation) of him to Jamaica.” (*Id.* at 3.) He also requests that the Court contact his mother to confirm that he is a U.S. citizen.

DISCUSSION

The federal district courts have jurisdiction over “any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1361. To obtain mandamus relief, a petitioner must show that: “(1) no other adequate means exist to attain the relief he desires, (2) the party’s right to the issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (*per curiam*) (internal quotation marks and citation omitted).

Here, Petitioner likely cannot obtain relief under the mandamus statute because he does not have a right to compel immigration authorities to notify the FBOP and his correctional facility that he is a U.S. citizen. In any event, to the extent he seeks to challenge his current custody, including any detainers, this district is not the proper venue to do so because a challenge to a petitioner’s physical confinement generally lies in the district of his confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004). Petitioner is currently detained at USP Victorville, which is located in the judicial district of the United States District Court for the Central District of California. Therefore, in the interest of justice, this Court transfers this petition to the Central District of California. *See* 28 U.S.C. § 1406(a).

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Clerk of Court is further directed to transfer this action to the United States District Court for the Central District of California. Whether Petitioner should be permitted to

proceed further without prepayment of fees is a determination to be made by the transferee court.
This order closes this case.

The Court certifies, pursuant to 28 U.S.C § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: March 3, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge